

tablished, and enforce it as reformed but subject to prior equities, *Moale v. Buchanan supra*. So though it cannot be done at law, *Bond v. Susq. Bridge Co.*, 6 H. & J. 178, equity will treat an absolute deed as a mortgage, and the Statute of Frauds is no defence to such an equity, *Farrell v. Bean*, 10 Md. 217; *Artz v. Grove supra*; (see *Hicks v. Hicks*, 5 G. & J. 75; *Dougherty v. McColgan*, 6 G. & J. 279; *Hinkley v. Wheelwright*, 29 Md. 341).⁹ And the Statute being designed, as observed by the Court in *Hall v. Hall supra*, to exclude oral evidence of the contract of sale, not oral evidence of the acts of part performance or of things done in execution of the contract, the latter may consequently be proved by parol, and the contrary doctrine was there pointedly overruled. And so a receipt expressed to be on a consideration relating to personalty, may be shewn **517** to be the consideration for a *purchase of land, *Shepherd v. Bevins supra*; however, this may probably be treated as a special case. It would appear too from *Spencer v. Pearce*, 10 G. & J. 294, though this rather relates to the proof, that insufficient proof of a sale within the Statute, unless excepted to in the Court below, will, on appeal, be sufficient to take the case out of the Statute; and see *Wolfe v. Hauver*, 1 Gill, 84; *Gibbs v. Gale*, 7 Md. 76, and the cases there cited.¹⁰

Possession as part performance.—But there cannot be part performance of an incomplete agreement, *Thynne v. Glengall*, 2 H. L. Cas. 131. But *query*, if there be a written agreement insufficient under the Statute, whether in Maryland, the parol treaty or agreement and part performance may not be shewn. And *possession*,¹¹ which is usually relied on as one of the most marked acts of part performance, must, to be available as such, be strictly in performance of and referable to the alleged contract and not to a distinct title, *Moale v. Buchanan supra*; as it is not sufficient if possession be not taken under the very agreement but under some subsidiary contract, *Owings v. Baldwin*, 8 Gill, 337; though possession, taken under a verbal agreement, sufficiently certain, previously to and continued after the terms of the agreement have been reduced to writing but unsigned, may, it seems, be such a part performance as to exclude a defence founded on the Statute, *Pain v. Coombs*, 3 Sm. & G. 449, see, however, *Howard v. Carpenter*, 11 Md. 259. The circumstances

⁹ See note 4 *supra*.

¹⁰ See note 91 *infra*.

¹¹ **Possession under parol gift.**—In Maryland the doctrine is that a parol gift of land, when followed by possession and by large expenditures by the donee in improving it, will be enforced in equity and a conveyance decreed. *Hardesty v. Richardson*, 44 Md. 617; *Loney v. Loney*, 86 Md. 652; *Poik v. Clark*, 92 Md. 372; *Whitaker v. McDaniel*, 113 Md. 388. And where specific execution of the contract cannot be decreed because of uncertainty in its terms, compensation will be given to the extent of the value of the improvements. *McNamee v. Withers*, 37 Md. 171; *Duckett v. Duckett*, 71 Md. 357. But no one can acquire title to land, maintainable at law, by parol gift followed by possession however long and exclusively continued. *Walsh v. McIntire*, 68 Md. 402. Cf. *Jacobs v. Disharoon*, 113 Md. 97.